

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling
Units and Other Real Estate Developments

MB Docket No. 07-51

Reply to commenting parties who raise the issue of demographics:

Multiple commenting parties, including Yignition Networks and Mr. Scifres of Pavlov Media, have taken the position that exclusive contracts make it possible to offer different programming to MDU tenants depending on their demographic characteristics. This is something that the Federal Communications Commission is required by statute to prevent.

If, as I previously believed, the issue of exclusive contracts were purely a matter of what was “best” or most “efficient”, then the Federal Communications Commission would have the discretion to use its own judgment. However, the question of whether all residents of MDU properties should be able to receive any particular service, without regard to the demographic characteristics of the residents of the MDU property, was decided by Congress in 1934, in the very law establishing the Federal Communications Commission and requiring that agency

to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex ... wire and radio communication service [47 USC Sec. 151]

Parties feeling that different service should be available to tenants of differing demographic characteristics must either petition Congress to amend the statute or petition the courts to rule on whether it violates the Constitution. The Federal Communications Commission can do neither of these things. Rather, it must follow the law as enacted by Congress, without regard to any opinion that the Federal Communications Commission might hold as to the wisdom of the law.

In particular, even if the Federal Communications Commission were to find exclusive contracts advantageous for economic or other reasons, it would still be required to prohibit use of exclusive contracts to the extent necessary to ensure that residents of MDU properties can receive any service that would be available if not for the demographic characteristics of the MDU residents.

The only two types of customization of video offerings due to demographic differences that the Federal Communications Commission should not prevent are:

1. In the particular case of properties with disabled tenants, any customization necessary to accommodate a disability, and
2. Providing parents in MDU properties with children with the ability to prevent the receipt in their apartment (although not elsewhere in the building) of programming that is inappropriate for their children (due to violent or sexual content), even if this ability is not needed in MDU properties with only adults (such as senior citizen housing).

These two exceptions may be made because the disabled and children are not included in the list of demographic groups that 47 USC Sec. 151 explicitly protects from discrimination in availability of communications service. Additionally, provision for “reasonable accommodation” of disabilities is required by the Americans with Disabilities Act. However, consideration of any of the demographic characteristics enumerated in 47 USC Sec. 151, while seemingly beneficial in some cases (such as considering the gender of the tenants when deciding whether to make “Lifetime” or the “Playboy Channel” available to them), is something that the Federal Communications Commission is charged with preventing “so far as possible”. As the proponents of exclusive contracts have admitted that exclusive contracts make such discrimination possible, the Federal Communications Commission has no choice but to prohibit these contracts.